

FIRST REGULAR SESSION

SENATE BILL NO. 559

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAEFER.

Read 1st time February 26, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

2248S.02I

AN ACT

To repeal section 536.025, RSMo, and to enact in lieu thereof one new section relating to emergency administrative rules.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 536.025, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 536.025, to read as follows:

536.025. 1. A rule may be made, amended or rescinded by a state agency
2 without following the provisions of section 536.021, only if the state agency:

3 (1) Finds that an immediate danger to the public health, safety or welfare
4 requires emergency action or the rule is necessary to preserve a compelling
5 governmental interest that requires an early effective date as permitted pursuant
6 to this section;

7 (2) Follows procedures best calculated to assure fairness to all interested
8 persons and parties under the circumstances;

9 (3) Follows procedures which comply with the protections extended by the
10 Missouri and United States Constitutions; and

11 (4) Limits the scope of such rule to the circumstances creating an
12 emergency and requiring emergency action.

13 2. At the time of or prior to the adoption of such rule, the agency shall file
14 with the secretary of state and the joint committee on administrative rules the
15 text of the rule together with the specific facts, reasons, and findings which
16 support the agency's conclusion that the agency has fully complied with the
17 requirements of subsection 1 of this section. If an agency finds that a rule is
18 necessary to preserve a compelling governmental interest that requires an early
19 effective date, the agency shall certify in writing the reasons therefor.

20 3. Material filed with the secretary of state and the joint committee on

21 administrative rules under the provisions of subsection 2 of this section shall be
22 published in the Missouri Register by the secretary of state as soon as practicable
23 after the filing thereof. Any rule adopted pursuant to this section shall be
24 reviewed by the secretary of state to determine compliance with the requirements
25 for its publication and adoption established in this section, and in the event that
26 the secretary of state determines that such proposed material does not meet those
27 requirements, the secretary of state shall not publish the rule. The secretary of
28 state shall inform the agency of its determination, and offer the agency a chance
29 to either withdraw the rule or to have it published as a proposed rule.

30 4. The committee may file with the secretary of state any comments or
31 recommendations that the committee has concerning a proposed or final order of
32 rulemaking. Such comments shall be published in the Missouri Register.

33 5. The committee may refer comments or recommendations concerning
34 such rule to the appropriations and budget committee of the house of
35 representatives and the appropriations committee of the senate for further action.

36 6. Rules adopted under the provisions of this section shall be known as
37 "emergency rules" and shall, along with the findings and conclusions of the state
38 agency in support of its employment of emergency procedures, be judicially
39 reviewable under section 536.050 or other appropriate form of judicial
40 review. The secretary of state and any employee thereof, acting in the scope of
41 employment, shall be immune from suit in actions regarding the adoption of rules
42 pursuant to this section.

43 7. A rule adopted under the provisions of this section shall clearly state
44 the interval during which it will be in effect. Emergency rules shall not be in
45 effect for a period exceeding one hundred eighty calendar days or thirty
46 legislative days, whichever period is longer; **however, provisions of law to the**
47 **contrary notwithstanding, emergency rules adopted to distribute funds**
48 **allocated by or to carry out the provisions of the American Recovery**
49 **and Reinvestment Act of 2009 as enacted by the 111th United States**
50 **Congress may, at the discretion of the joint committee on**
51 **administrative rules, be in effect for a period not to exceed two**
52 **calendar years.** For the purposes of this section, a "legislative day" is each
53 Monday, Tuesday, Wednesday and Thursday beginning the first Wednesday after
54 the first Monday in January and ending the first Friday after the second Monday
55 in May, regardless of whether the legislature meets.

56 8. A rule adopted under the provisions of this section shall not be

57 renewable, nor shall an agency adopt consecutive emergency rules that have
58 substantially the same effect, although a state agency may, at any time, adopt an
59 identical rule under normal rulemaking procedures.

60 9. A rule adopted under the provisions of this section may be effective not
61 less than ten days after the filing thereof in the office of the secretary of state, or
62 at such later date as may be specified in the rule, and may be terminated at any
63 time by the state agency by filing an order with the secretary of state fixing the
64 date of such termination, which order shall be published by the secretary of state
65 in the Missouri Register as soon as practicable after the filing thereof.

66 10. If it is found in a contested case by an administrative or judicial fact
67 finder that an agency rule should not have been adopted as an emergency rule as
68 provided by subsection 1 of this section, then the administrative or judicial fact
69 finder shall award the nonstate party who prevails, as defined in this section, its
70 reasonable fees and expenses, as defined in this section. This award shall
71 constitute a reviewable order. If a state agency in a contested case grants the
72 relief sought by the party prior to a finding by an administrative or judicial fact
73 finder that the state agency's action was based on a statement of general
74 applicability which should not have been adopted as an emergency rule, but was
75 in fact adopted as an emergency rule pursuant to this section, then the affected
76 party may bring an action in circuit court of Cole County for the nonstate party's
77 reasonable fees and expenses, as defined in this section.

78 11. For the purposes of this section, the following terms mean:

79 (1) "Prevails", obtains a favorable order, decision, judgment or dismissal
80 in a civil action or agency proceeding;

81 (2) "Reasonable fees and expenses" includes the reasonable expenses of
82 expert witnesses, the reasonable cost of any study, analysis, engineering report,
83 test or project which is found by the court or agency to be necessary for the
84 preparation of the party's case, and reasonable attorney or agent fees.

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